THE ATTORNEY-GENERAL, SINGAPORE v. LEE KENG KEE

[C.A. (Wee Chong Jin C.J., Sinnathuray & Lai Kew Chai JJ.) May 4, 1982]

[Singapore — Civil Appeal No. 106 of 1980]

Administrative Law — Dismissal of police inspector as a result of disciplinary action taken against him — Whether dismissed null and void for non-compliance with rules of natural justice and regulations — Police Force Act (Cap. 78), ss. 26, 27, 28 & 28A — Public Service (Disciplinary Proceedings) Regulations, 1970, reg. 4 — Constitution of Malaysia, art. 135(2).

Constitutional Law — Natural Justice — Police inspector — Right to be heard — Constitution of Singapore (Reprint 1980), art. 110(3).

Police Force — Police inspector — Dismissal of — Whether there was compliance with regulations and rules of natural justice.

This was an appeal from the judgment of Rajah J. in which the learned judge held (see [1981] 2 M.L.J. 220) that the dismissal of the respondent from the Police Force was null and void and that the respondent was still an Inspector in the Police Force and was entitled to be remunerated as such. The learned judge held that the respondent was not given a reasonable opportunity of being heard before he was dismissed and was accordingly denied his constitutional rights as a Police Officer under article 110(3) of the Constitution.

Held, allowing the appeal: the learned trial judge had erred in holding that the requirements of Article 110(3) of the Constitution had not been complied with. He had failed to give weight to the letter of the Acting Permanent Secretary and had misunderstood the decision in *Jacob* v. *Attorney-General*.[1] The respondent had been informed at the earliest stage that a range of punishments, including dismissal, was under consideration. Although he did not avail himself of the opportunity, the respondent was nevertheless afforded the opportunity of being heard on the contemplated dismissal.

Case referred to:-

(1) *V.C. Jacob* v. *Attorney-General* [1970] 2 M.L.J. 133.

CIVIL APPEAL.

Chao Hick Tin (*Miss Rosalind Ong* with him) for the appellant.

J.B. Jeyaretnam for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J.: (delivering the judgment of the Court): This appeal arises from a judgment of the High Court in which it was declared that the dismissal of the respondent on December 11, 1977 from the service of the Singapore Police Force was null and void and that the respondent had continued to be and was still an Inspector in the Police Force and was entitled to be remunerated as such.

It was contended on behalf of the Attorney-General that the learned trial judge had erred in law in holding that the dismissal of the respondent was not in accordance with Article 110(3) of the Constitution of Singapore because the respondent had not been given an opportunity to be heard in mitigation on the penalty of dismissal proposed to be imposed upon him.

At the conclusion of the hearing of the appeal, we allowed the appeal. We now set out our reasons.

In December 1965 the respondent joined the service of the Singapore Police Force as a constable recruit. In the following year, he was confirmed in the rank of a constable. In 1971 he was promoted to the rank of an Inspector.

By a letter dated 6 April 1977 the Acting Permanent Secretary of the Ministry of Home Affairs informed the respondent that disciplinary proceedings under Regulation 4 of the Public Service (Disciplinary Proceedings) Regulations, 1970 ("the Regulations") had been commenced against him. Three charges were preferred against him. The material parts of the letter read as follows: —

"I am directed by the Public Service Commission to inform you that the Commissioner of Police, acting under section 28A of the Police Force Act (Chapter 78) has referred to the Public Service Commission a case where disciplinary proceedings are to be taken against you. The same are hereby commenced against you under *Regulation 4 of the Public Service (Disciplinary Proceedings) Regulations, 1970* on the following charges:-

That you, Lee Keng Kee, Inspector of Police attached to the Singapore Police Force, Republic of Singapore, are charged:

a. That you, between February 28, 1975 and March 4, 1975 whilst making and on a trip from Singapore to Kuala Lumpur, West Malaysia and back, in the course of investigating into a case of Criminal Breach of Trust as a servant against one Chua Ah Luck did conduct yourself in a manner which would bring the public service to disrepute, to wit, you allowed or arranged for one Yap Sing Waa, Assistant Manager-cum-Director of M/s Siptraco Pte. Ltd., Republic of Singapore, who was the complainant in the abovementioned case, to bear the expenses of your passage to Kuala Lumpur and other expenses incurred during the trip by you and your wife, whom you had brought along to Kuala Lumpur.

b. That you, between 3 p.m. on the 1st day of March 1975 and 12 noon on the 2nd day of March 1975, did accept for yourself and your wife Mdm. Koh Yan Choon, entertainment, to wit, the expenses of the passage from Kuala Lumpur, West Malaysia to the Genting Highlands and other expenses incurred during this trip from a member of the public who had official dealings with you, namely Yap Sing Waa, the Assistant Manager-cum-Director of M/s Siptraco Pte. Ltd., Republic of Singapore, such entertainment being of such a character as to place you under a real or apparent obligation to the said Yap Sing Waa, and you have thereby contravened paragraph L 91 of Instruction Manual No. 2 made applicable to you by the Police General Orders.

c. That you, sometime in May 1976, did attempt to interfere with the investigations of the Corrupt Practices Investigations Bureau, Republic of Singapore, into allegations of corrupt practices against you by asking one Yap Sing Waa, an Assistant Manager-cum-Director of M/s Siptraco Pte. Ltd., Republic of Singapore, through one Lee Ah Kow @ William Yeo of No. 2 Jalan Tembusu, Republic of Singapore, to inform the Corrupt Practices Investigation Bureau that you had paid for your wife's passage when she accompanied you to Kuala Lumpur in February/March 1975, and you have thereby conducted yourself in a manner prejudicial to the good order and discipline of the Singapore Police Force.

2. ....

3. In accordance with Paragraph (2) of Regulation 4 of the said Regulations, you are requested to state in writing on or before the expiry of seven working days from the date of receipt of this letter any representations you may wish to make to exculpate yourself from the charges referred to above.

4. For your information, upon conclusion of the disciplinary proceedings and in accordance with the merits of the case, *the Public Service Commission is authorised by sub-section (2) of section 28A of the Police Force Act to impose upon you any of the punishments prescribed in section 27 or 28 of the said Act, whichever is appropriate. The Commission may also require your dismissal or retirement from the Police Force as it deems appropriate.*

5. ....

6. ....

(The italics is ours).

The respondent availed himself of the opportunity and on April 26, 1977 submitted to the Public Service Commission ("the PSC") his exculpatory statement in which he categorically denied all charges brought against him. Not accepting the exculpatory statement, the PSC appointed a Committee of Inquiry ("the Committee") under Regulation 4(3) of the Regulations.

On July 9, 1977 the Chairman of the Committee wrote to the respondent for the names of witnesses he might wish to call and for six copies of any document he might wish to tender. The respondent's solicitors submitted a list of eight witnesses, including Superintendent Ng Leng Hua, who "tentatively" the respondent would be calling.

On August 30, 1977 the respondent's solicitors wrote to his witnesses, including Superintendent Ng Leng Hua, requesting them to attend the hearing before the Committee at 9 a.m. on September 6, 1977 at the Ministry of Home Affairs, Phoenix Park, Singapore. On August 31, 1977 the officer-in-charge of "B" Division of the Singapore Police Force informed the respondent's solicitors that Superintendent Ng Leng Hua had left Singapore for Europe for his meeting/vacation leave and that Superintendent Ng would only be resuming duty on October 14, 1977. Neither the respondent nor his Solicitors took any further steps to ensure that Superintendent Ng was available at the hearing.

The hearing before the Committee lasted three days. Three months later, the respondent was informed that he had been dismissed. Upon enquiry, he was told that he had been found guilty on charges (a) and (b).

The respondent commenced proceedings seeking the declarations which the learned trial judge made after the trial or alternatively damages for wrongful dismissal and costs.

The only contention of the respondent which succeeded before the learned trial judge was his complaint that he was not given a reasonable opportunity of being heard before he was dismissed and was accordingly denied his constitutional rights as a Police Officer under Article 110(3) of the Constitution.

Article 110(3) provides:

"No public officer shall be dismissed or reduced in rank under the provisions of this article without being given a reasonable opportunity of being heard."

After considering *V.C. Jacob* v. *Attorney General*[1] the learned trial Judge said in his Judgment:

"In the instant case the plaintiff was not categorically told, as was done in the *Jacob* case, that the question of his dismissal from the Police Force was under consideration. In fact what he was categorically told, as being under consideration, is, set out in paragraph 4 of the first letter written by the Acting Permanent Secretary dated 6th April 1977 and the punishments there envisaged could be any one of seven punishments ranging from a paltry fine not exceeding $200 to the extreme punishment of dismissal from the Police Force. Further, in the *Jacob* case the Committee was presumably empowered to hear submissions on punishment, and, what is more, did, in fact, invite such submissions. In our case the Committee was neither empowered nor did it, for it could not, invite representations on punishment, if found guilty, on the charges. Even if Mr. Chao's submissions on the current Regulation 4 are accepted as notifying the plaintiff of dismissal or reduction in rank the plaintiff neither had nor was given any opportunity of saying anything on these punishments either to the Committee or the P.S.C.

It is further to be noted that in the *Jacob* case, where there was only a single possible punishment under old Regulation 4, namely dismissal, the learned Chief Justice was of the view that the public officer was entitled to be told of this specifically and be given the opportunity to say something on punishment even though such punishment was mandatory."

The learned trial Judge also said:

"The Article would have been satisfied had the public officer been afforded an opporunity to present his views on punishment to the P.S.C. This opportunity could have been afforded to the public officer at the inquiry stage, as was done in the *Jacob* case and that of *Sithambaran*. As the opportunity to be heard had not been afforded to the plaintiff at the inquiry stage then that opportunity should have been provided sometime between the termination of the inquiry and the imposition of the punishment or penalty. The opportunity not having been so provided the rule of fairness was broken and any punishment or penalty imposed in such circumstances is against the rules of natural justice."

With all due respect to the learned trial judge, we are of the view that he had erred in holding that the requirements of Article 110(3) of the Constitution had not been complied with. He had failed to give due weight to the letter of the Acting Permanent Secretary which we had quoted and had misunderstood the decision of the learned Chief Justice in *Jacob's* case. The sentences in the said letter which we have underlined showed that the respondent had been informed at the earliest stage that a range of punishments, including dismissal, was under consideration. Although he did not avail himself of the opportunity, the respondent was nevertheless afforded the opportunity of being heard on the contemplated dismissal. Contrary to what the learned trial Judge had said in *Jacob's* case the inquiry committee did not invite the officer to make a submission before his dismissal was ordered nor was dismissal in that case mandatory.

The respondent's contention in this case that contrary to Article 110(3) of the Constitution he was denied the right to make representations before the Committee is exactly the same contention made in *Jacob's* case which considered Article 135(2) of the Malaysian Constitution which was then applicable to Singapore and which is similar to Article 110(3). The material facts in that case and in this case on this issue are identical. The learned Chief Justice in that case said at page 136, R.H.C. 1980:

"However, the point that was taken by the plaintiff in his statement of claim as amended on the day of the hearing and that was urged before me by his counsel at the hearing, is that under article 135(2) the committee of inquiry must, *inter alia*, give the plaintiff the right to make representations as to the punishment to be imposed. The relevant facts, which are not in dispute commence from the said letter dated 26th June 1963 written by the Permanent Secretary (Health) to the plaintiff. It is to be observed that in that letter the plaintiff was informed in clear language that the question of his dismissal from the public service on grounds fully spelt out in the letter was under consideration. It is also to be observed that the chairman of the committee of inquiry informed him by letter on 25th October 1963 that the 'question of your dismissal' will come up on the 4th November 1963.

In my opinion the plaintiff was left in no doubt at all that if the charges against him were proved he might suffer the extreme penalty of all, namely dismissal from the public service. It follows, in my view, that he had, *at the earliest stage* in the matter, been afforded the opportunity to make representations to the committee of inquiry, if he so wished, as to why he should not suffer the contemplated penalty of dismissal on the charge enumerated against him. He could have

availed himself of the opportunity to be heard on the contemplated dismissal.

Lastly, it is clear from a perusal of the record of the evidence and the statements before the committee of inquiry that the plaintiff did not avail himself of the opportunity to make representations on the question of punishment and it is not alleged that there was any refusal on the part of the committee of inquiry to hear him on the question of punishment. It follows, in my judgment, on the pleadings, on the arguments put forward on behalf of the plaintiff by his counsel and on the facts that the committee of inquiry did not fail to give nor did it deny the plaintiff the right to make representations on the question of punishment."

By a respondent's notice, it was contended that the respondent was denied the opportunity to have examined before the Committee Supt. Ng Leng Hua, a material witness for the respondent, contrary to Regulation 4(6) of the Regulations. At the trial, the respondent had alleged that the respondent had applied for an adjournment to call Supt. Ng Leng Hua. The learned trial Judge on the evidence properly found that no such application for an adjournment was made. Before us, it was argued that the Committee should have adjourned on its own motion. There is no merit at all in the contention.

We accordingly allowed the appeal with costs here and below. The judgment below was set aside.

Appeal Allowed.

Solicitors: *J.B. Jeyaretnam & Co.*

THE "KOTA PAHLAWAN"; "KOTA PAHLAWAN", OWNERS OF SHIP v. "KOTA PAHLAWAN", OWNERS OF CARGO

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.) May 13, 1982]

[Singapore — Civil Appeal No. 64 of 1981]

Practice and Procedure — Admiralty action — Action in rem — Leave to amend — Indorsement of plaintiffs' address — Court must be satisfied that mistake was genuine — Rules of the Supreme Court 1970, O. 20 r. 5(2) & (3).

Shipping Law — Action in rem — Contract of carriage by sea — Proper party to sue — Consignees and not shippers to sue — Bills of Lading Act, 1855.

On May 11, 1981, the learned Assistant Registrar granted leave to the plaintiffs/respondents to amend the indorsement of address of the plaintiffs/respondents in the Writ of Summons. An appeal against the decision of the learned Assistant Registrar to the Judge in chambers was dismissed (see [1982] 1 M.L.J. 13). The defendants/appellants appealed against the learned Judge's decision.

Held, allowing the appeal: (1) the shipper could not recover from the carrier damages in cases of carriage of goods by sea where the contract contemplated that the carrier would also enter into separate bill of lading contracts with whoever might become the owners of the goods and the indorsees of the Bills of Lading. Hence, in the present case, the shippers could not have sued the appellants;

(2) to allow an amendment, even if the effect is to substitute a new party after the expiry of any relevant period of limitation, it must be shown that the mistake sought to be corrected was a genuine mistake and was either not misleading or not such as to cause any reasonable doubt as to the identity of a plaintiff or a defendant; in the present case the respondents conceded that they had not brought themselves within Order 20 r. 5(2) & (3).

Cases referred to:-

(1) *The Albazero* [1977] A.C. 774.

(2) *Dunlop* v. *Lambert* (1839) 6 Cl & F. 600.

Per curiam: *Dunlop* v. *Lambert* no longer good law in light of the *Albazero case.*

CIVIL APPEAL.

G. Pannirselvam (*Roop Parkash* with him) for the appellants.

K. Pillai Nirumalan (*K. Gopalan* with him) for the respondents.

Lai Kew Chai J. (delivering the judgment of the Court): This appeal concerns the circumstances under which an amendment to a writ may be allowed under Order 20 sub-rules 5(2) and 5(3) of the Rules of The Supreme Court, 1970 ("the Rules"), which read as follows: —

"5(2). Where an application to the court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

5(3). An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued."

On May 11, 1981 the learned Assistant Registrar granted leave to the respondents to amend the indorsement of the address of the respondents at page 3 of the Admiralty *in rem* Writ of Summons in the following manner: —

From:

"This writ was issued by Wu & Raja of No. 205 Colombo Court, Singapore, Solicitors for the said plaintiff(s) whose address is at 34 Lorong 32, Geylang Road, Singapore 14". ("the Singapore address")

To:

"This writ was issued by Wu & Raja of No. 205 Colombo Court, Singapore, Solicitors for the said plaintiff(s) whose address is at Jalan Sunan Ampel, No. 12, Jakarta, Indonesia, and is a partnership firm with limited liability and registered according to the laws of Indonesia" ("the Indonesian address").

An appeal against the decision of the learned Assistant Registrar to the judge in chambers was dismissed with costs. Against the decision of the learned judge this appeal was brought. At the conclusion of the hearing of the appeal before us, we allowed the appeal. We now give our reasons.

A brief chronology of a few vital dates and events is necessary to an understanding of the issues. As evidenced by a Bill of Lading numbered 2 and dated 6 January 1979 Universal Union Trading Co. Pte. Limited ("the Shippers") of the Singapore address shipped on board the appellants' vessel "Kota Pahlawan" 315 cases of automative spare parts for carriage from Singapore to Tanjong Priok/Jakarta, Indonesia. The goods were to be delivered to the order of The Chase Manhattan Bank N.A. or their order. As the goods were shipped out of Singapore the contract of carriage was subject to the Carriage of Goods by Sea Act, 1972 of Singapore. Under Article III Rule 6 of the Schedule